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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/592,436	06/12/2000	Lisa Cousins	571-651	5154
1059	7590	12/03/2003	EXAMINER VANORE, DAVID A	
BERESKIN AND PARR SCOTIA PLAZA 40 KING STREET WEST-SUITE 4000 BOX 401 TORONTO, ON M5H 3Y2 CANADA			ART UNIT 2881	PAPER NUMBER

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/592,436

Applicant(s)

COUSINS ET AL.

Examiner

David A Vanore

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-16, 18, 19 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-16, 18, 19 and 21-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6, 8-16, 18-19, and 21-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Whitehouse et al.

Whitehouse et al. teaches a mass spectrometer device and method for the analysis of a specimen comprising the following:

1) An electrospray ion source (1), a plurality of multipoles (110 and 111) which may be a quadrupole, octapole, or higher rod number device, having an RF and AC field applied thereto (Col. 12 Lines 22-29 and Col. 14 Lines 38-Col. 15 Line 19) for the repeated selection, trapping and fragmentation of ions on their m/z basis (Col. 22), a collision gas in the multipole (Col. 11 Lines 19-50) where the collisions occur in the multipole at a resonant frequency to excite desired ions, a modulation means for adjusting the applied alternating current (Col. 16 Lines 47-50), and a detector (47)

where the signal produced from many data sets of mass spectra is collected and passed to an analysis means where alternating data sets are subtracted from others to screen parent and daughter ion peaks (Col. 15 Line 5-19) as recited in claims 1, 5, 6, 10, 11, 12, 14, 15, 21-32.

While Whitehouse fails to explicitly teach a switch, the device of Whitehouse detects and sorts the data received from multiple generations of parent and offspring ions as cited above. The switching means for manipulating the detected data is an inherent feature of Whitehouse et al.

2) The second power supply and modulation unit recited in claim 16 are inherent features of Whitehouse et al. Whitehouse et al. teaches the application of AC, RF, and DC potentials to the multipole (16) and the modulation of all of these signal in the cited passages above. Necessarily, the device has a plurality of power supplies and modulation means would have to be coupled to the power supplies.

3) A first mass analysis section for selecting a parent ion and detecting with detector (38), a final mass analysis section including a detector (47), where the final mass analyzer includes a scanning mass analyzer with a time of flight detection means (Col. 8 Lines 31-35) as recited in claims 18-19.

4) The selection of a desired m/z ratio, providing a potential difference to accelerate ions into the collision cell, fragmenting selected ions using their kinetic energy or by applying a resonant field to create any of a plurality of offspring ions (Col. 8 Line 36-Col. 9 Line 18) as recited in claims 8-9. The generation of secondary, tertiary, or quaternary offspring ions is an inherent capacity in MS/MS^n devices.

5) A device which uses statistical analysis to select data and performs time of flight mass analysis in real time (Col. 7 Line 52-61) as recited in claims 2 and 4. The use of a software program to perform statistical analysis on the data as recited in claim 3, is an inherent feature of the invention of Whitehouse et al. because the use of a computer to process data in a mass spectrometer, especially one such as Whitehouse et al. which analyzes a large quantity of spectra data, is necessary and conventional.

6) A method of analyzing a specimen where an alternating current is applied and turned on and off to selectively generate different species of ions for analysis (Col. 14 Lines 38-60) as recited in claim 13.

Response to Arguments

Applicant's arguments filed November 11, 2003 have been fully considered but they are not persuasive.

Applicant's arguments are directed towards limitations not previously presented. The new limitations have been addressed in this Office Action and are taught at Col. 22 Lines 1-28 of Whitehouse et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Vanore whose telephone number is 703-306-0246. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on 703-308-4116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 09/592,436

Page 5

Art Unit: 2881

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

dav


DAVID D. LEE
ATTORNEY AT LAW